

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

04 10610 RWZ

ANTHONY F.,
BY AND THROUGH HIS NEXT FRIENDS,
EDWARD F., AND LISA F.,
PLAINTIFFS

MAGISTRATE JUDGE

COMPLAINT

v.

SCHOOL COMMITTEE OF THE CITY OF MEDFORD,
DEFENDANT

RECEIPT # 54885
AMOUNT \$150
SUMMONS ISSUED \$5
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. J.O.M.
DATE 3/29/04

PARTIES

1. The plaintiff, Anthony F., resides with his parents at 88 Dudley Street, Medford, Massachusetts.
2. Edward F., and Lisa F., (hereinafter "the Parents"), reside at 88 Dudley Street, Medford, Massachusetts.
3. The defendant, the School Committee of the City of Medford (hereinafter "School Committee"), consists of seven members who oversee the actions of the employees of the City of Medford School District.
4. Mayor Michael McGlynn serves as chairman of the School Committee, and for the purposes of the Massachusetts Tort Claims Act, M.G.L. c. 258 §1, et seq., acts as the executive officer.

JURISDICTION AND VENUE

5. Subject matter jurisdiction properly lies with United States District Court in that the matter involves a civil action under 20 U.S.C. §1415(i)(3).
6. The plaintiff is a resident of the Massachusetts and the defendant is a body politic of a political subdivision of the Commonwealth of Massachusetts, giving this Court personal jurisdiction over both parties.
7. Venue is proper in the Eastern Division of the District of Massachusetts in that the plaintiff is a resident of Massachusetts and the defendant is a subdivision of a Massachusetts municipality.

8. On August 25, 2003, the Parents presented their claim for payment of attorney's fees to Mayor Michael McGlynn, as Chairman of the School Committee, in compliance with the provisions of the Massachusetts Tort Claim Act, M.G.L. c. 258, §4.

FACTS

9. Anthony has been determined to be a special education student, as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, *et seq.*
10. The 2000-2001 Individualized Education Plan (hereinafter "IEP") required Medford to provide Anthony with SPED services to improve his reading and speech & language skills.
11. The 2000-2001 IEP expressly stated Anthony would receive both reading and speech & language instruction in an individualized setting.
12. During the 2000-2001 school year, Anthony attended St. Clement's parochial school in Somerville, Massachusetts, but received SPED services at Medford's Robert's Middle School.
13. The IEP the School District proposed for the 2001-2002 school year, Anthony's freshman year at Malden Catholic High School, did not specify when the instruction would occur, nor did it state that Anthony would receive individualized instruction.
14. Further, the School District changed the reading instruction from an individualized setting to a small group setting, without providing any justification for the reduction in services.
15. Mrs. F. rejected the IEP for the 2001-2002 school year on July 1, 2001.
16. As a result of Mrs. F.'s rejection of the 2001-2002 IEP, the dispute resulted in a action before Hearing Officer Sara Berman of the Bureau of Special Education Appeals (the "BSEA"), Case No. 02-1855 (the "first case").
17. In their written closing argument submitted after the close of a three day hearing, Anthony's parents contested three main aspects of the IEP.
18. First, the Parents believed Anthony was entitled to individualized reading services. The School District proposed small group reading instruction.
19. Second, the Parents wanted the SPED services provided at Malden Catholic High School, rather than at Medford public schools.
20. Third, the parents asserted Anthony was entitled to "compensatory services," to make up for the period of time that Anthony did not receive any services.

21. In July 2002, Medford drafted the IEP for the 2002-2003 school year, in which Medford again proposed small group reading services, with sessions scheduled at Medford High School.
22. On August 13, 2002, Mrs. F. rejected the IEP for the 2002-2003 school year.
23. On September 23, 2002, Mrs. F. filed a Request for Hearing with the BSEA, resulting in a second BSEA case. (BSEA Case No. 03-1017.)
24. On or around October 2, 2002, the School District agreed to an arrangement whereby the Parents pay Dr. Joseph Aurelia to provide speech & language SPED services at Malden Catholic High School, with subsequent reimbursement to the Parents from the School District.
25. On November 15, 2002, Hearing Officer Sara Berman issued her Decision in the first case, ordering the School District to provide compensatory services reading services.
26. In December, 2002, the School District and Anthony's parents agreed a reading instructor employed by the neighboring city of Malden would provide Anthony with SPED reading services, at any location agreeable to the Parents.
27. Similar to the arrangement with Dr. Aurelia, the Parents pay for the SPED reading services, with subsequent reimbursement from the School District.
28. Medford subsequently agreed to provide 30 sessions of compensatory reading services.
29. On July 24, 2003, the Parents filed a Request for Dismissal of the second BSEA case, having obtained all of the relief they sought in the action.

COUNT I

30. The plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1 through 29 above, as if set forth fully herein.
31. Anthony now receives SPED speech & language services, with the services provided by private instructors at his parochial school.
32. Anthony now receives SPED reading services provided by private instructors at his parochial school.
33. The School District agreed Anthony is entitled to 30 sessions of compensatory reading services.
34. This Court may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. 20 U.S.C. 1415(i)(3)(B).

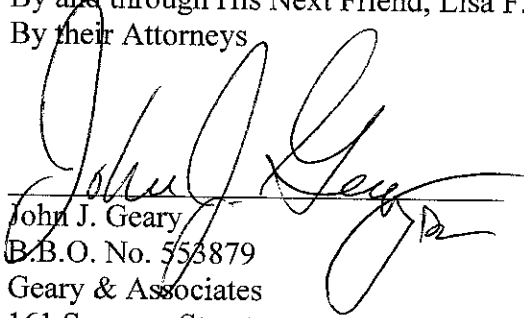
35. The Parents prevailed on all three significant claims as a result the two BSEA cases.
36. Through the course of representation, the Parents' attorneys billed the Parents for approximately 230 hours, representing legal fees in excess of \$28,000.00 at the firm's usual and customary hourly rate.

WHEREFORE, the Anthony F., by and through Edward F. and Lisa F. as next friends of the plaintiff, demands an award of the reasonable cost of attorneys fees incurred in this action, as well as any other relief the Court deems appropriate and just.

CLAIM FOR TRIAL BY JURY

The plaintiff claims a trial by jury on all issues so triable.

Respectfully Submitted,
Anthony F.,
By and through His Next Friend, Lisa F. and Edward F.,
By their Attorneys


John J. Geary
B.B.O. No. 553879
Geary & Associates
161 Summer Street
Kingston, MA 02364

Dated: *March 26, 2004*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only)

Anthony F., by and through his next friends, Anthony F. and Lisa F. v. School Committee of the City of Medford

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

 I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases. *Also complete AO 120 or AO 121 III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 380, 385, 450, 491. IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Not Applicable.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John J. Geary,ADDRESS Geary & Associates, 161 Summer Street, Kingston, MA 02364TELEPHONE NO. 781-585-0008

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Anthony F., by and through next friends, School Committee of the City of
Edward F. and Lisa F. Middlesex Medford

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

John J. Geary,
Geary & Associates
161 Sumner Street, Kingston, MA 02364

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Unemployment Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

The plaintiffs seek to recover attorneys fees pursuant to 20 USC 1415(i)(3).

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE
E

DOCKET NUMBER

DATE 3/25/04
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

APPEARING IFP

JUDGE

MAG. JUDGE

RECEIPT #

AMOUNT